S.B.Civil Writ Petition NO.447/2004

Rajendra Kumar

vs

State of Rajasthan & Ors.

DATE OF ORDER : - 19.1.2005

HON'BLE MR. PRAKASH TATIA,J.

Mr. M.S.Godara, for the petitioner.
Mr. L.R.Upadhayay, Dy.GA,
Mr. Ravi Bhansali, for the respondent.

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Heard learned counsel for the parties.

Brief facts of the case are that petitioner applied for the allotment of the land for industrial purpose under the provisions of the Rajasthan Land Revenue (Industrial Area Allotment) Rules, 1959. The lease was sanctioned in favour of the petitioner by order dated 3rd July, 1997 (Annex.1). It appears that the audit objection was raised against the allotment on the ground that any lease for the petrol pump, which includes the service station can be granted under the provisions of the Rajasthan Land Revenue (Allotment, Conversion and Regularization of Agricultural Land for Construction of Cinemas and Establishment of Petrol Pump or Medical Facilities) Rules, 1978. The audit objection is that by granting lease in favour of the petitioner under the provisions of

the Rules of 1959, the State has put to the loss of Rs.3,24,000.69/-. The Tehsildar, Railmagara on the basis of such objection issued a notice to the petitioner for recovery of the above mentioned amount, copy of which is placed as Annex.A/3. The petitioner being aggrieved against the action of the respondent preferred appeal before the Addl. District Collector (Admn.), Rajsamand, which was allowed by the appellate authority vide order dated 17th April, 2003 and the recovery notice was quashed. However, while rejecting the appeal, the appellate authority observed that the Tehsildar concerned shall obtain the necessary orders from the Land Allotting Authority, i.e., District Collector amending the earlier orders and, thereafter, shall initiate the proceedings for recovery of the amount from the petitioner. The District Collector, Rajsamand by order dated 1.1.2004 merely on the basis of the audit objection amended the land allotment order, which was passed in favour of the petitioner on 3rd July, 1997.

According to learned counsel for the petitioner, the petitioner applied for the lease under the provisions of Rajasthan Land Revenue (Industrial Areas Allotment) Rules, 1959. The petitioner never applied for any conversion or allotment of land under the provisions of Rajasthan Land Revenue (Allotment, Conversion and Regularization of Agricultural Land for Construction of Cinemas and Establishment of Petrol Pump or Medical Facilities) Rules, 1978. The petitioner once

granted lease under the provisions of Rules of 1959, his lease could not have been cancelled by the said authority on the ground of mere audit objection. It is also submitted that the order dated 7.1.2003 passed by the Tehsildar for recovery of Rs.3 lacs is void-ab-initio as it has been issued to the petitioner without any authority of law and contrary to the lease order, which was passed in favour of the petitioner. It is also submitted that the order of the District Collector dated 1.1.2004 passed after the decision of the appellate authority dated 17th April, 2003 too is absolutely void and without jurisdiction as petitioner never applied for any allotment or conversion of land under the rules of 1978. According to learned counsel for the petitioner, if authorities can cancel the lease of the petitioner, which was granted under the Rules of 1959, the authorities could have done so, but the authorities have no right to convert the land or allot the land to the petitioner for which he never applied and the authorities by doing this cannot impose the liability upon the petitioner.

Learned counsel for the respondent submitted that the land for the service station can be allotted or converted under the Rules of 1978 only, which are specific rules for allotment or conversion of the land for the purpose of establishing petrol pump. As per definition of the petrol pump given in Rule 2H of the Rules of 1978, the service station is also included in the definition of petrol pump and the petitioner himself

admitted that he applied for lease for establishing the service station. Therefore, the land could have been allotted only under the rules of 1978.

I considered the submissions of learned counsel for the parties and perused the impugned orders. Since the order of the Tehsildar Annex.3 dated 7.1.2003 has already been set aside by the learned Addl. District Collector (Admn.), Rajsamand by order dated 17th April, 2003 (Annex.5), therefore, the grievance of the petitioner does not survive against the recovery notice issued by the Tesildar (Annex.3).

So far as order dated 1.1.2004 is concerned, it appears to be wholly without jurisdiction in view of the fact that the learned District Collector himself after considering the application of the petitioner under the rules of 1959 granted the lease of the land to the petitioner for establishing the industry and it is not the case of the respondents that petitioner ever applied for allotment or conversion of any land under the rules of 1978. It is also apparent that the lease as granted by the order dated 3rd July, 1997 has not been cancelled on any of grounds as available to the respondents under the provisions of the Rules of 1959. Mere audit objection itself cannot be a ground to cancel the allotment of the plot for establishing the industry. The petitioner's application does not fall in any of the category of application for

allotment of the land for the purpose of establishing the industry then that application could have been dismissed and the allotment of land made in favour of the petitioner could have been cancelled on violation of any of the condition of the lease, but the application, which was filed by the petitioner for allotment of the land under the rules of 1959 could not have been converted into an application under the Rules of 1978. Therefore, the order dated 1.1.2004 (Annex.6) is liable to be quashed and set aside, hence quashed and set aside. However, it is left open for the concerned authorities to take any action if they finds that petitioner has violated the condition of the allotment of the land and the authority may initiate action for cancellation of the lease granted to the petitioner vide order dated 3rd July, 1997, but strictly in accordance with law and with the provisions under which the said lease can be cancelled.

The writ petition of the petitioner is, therefore, allowed.

(Prakash Tatia), J.

c.p.goyal/-